

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 96-1

February 8, 1996

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: Submission of Advice Cases

Pursuant to Manual Section 11751.1, I have conducted a review of the requirements for mandatory submission of cases to the Division of Advice and I have set forth below all of such requirements.¹

1. Section 10(j) Cases, where Regions seek authorization to file a 10(j) petition.
2. 48-hour rule, i.e. after Board authorizes 10(j), Region wishes to delay filing of petition for 48 hours or more.
3. Contempt of 10(j) or 10(l) court order.
4. Cases involving novel legal theories or remedies where there is no extant Board law.
5. Cases where Region wishes to overturn precedent.
6. Cases that are the subject of national attention.
7. Cases where charges presenting the same issues are filed in different Regions.
8. Cases involving antidual shop clauses ("Double-breasting" situations).
9. Novel issues involving impact of bankruptcy on our cases. Submit to Special Litigation.
10. Where the filing of a grievance or lawsuit is alleged to be unlawful and the Region wishes to issue complaint based either upon footnote 5 in Bill Johnson's or that the lawsuit is not reasonably based.

¹ This memorandum sets forth all current requirements, and thus it is not necessary to refer back to prior GC memoranda on this subject.

11. EAJA cases where Region wishes to pay a claim.
12. Cases involving whether company owned by employees, in whole or in part (ESOP), has a bargaining obligation.
13. Cases involving whether employee activities to form an ESOP are protected.
14. Cases involving interpretation of other statutes, e.g., ERISA, RLA, ADA.
15. Cases presenting issues involving undocumented aliens.
16. Cases involving bargaining to impasse for unilateral control over terms of employment in excess of that allowed by case law, e.g., Colorado Ute, 295 NLRB 607 (1989), Toledo Blade, 295 NLRB 626 (1989), McClatchy Newspapers, 299 NLRB 1045, enf denied and remanded 964 F.2d 1153 (D.C. Cir. 1992).
17. Cases involving unilateral implementation after impasse, of employment terms constituting a statutory waiver. See Colorado-Ute, 295 NLRB 607.
18. Cases involving scope of Section 8(d) bargaining obligation under Dubuque Packing Company, 303 NLRB 386, unless resolved by GC Memorandum 91-9.
19. Cases involving the effect of resignation upon dues checkoff authorization where a union-security clause is in effect in a non-right to work state. See IBEW Local 2008 (Lockheed), 302 NLRB 49 (1991) where this issue is left open.
20. Cases of potential or actual overlapping jurisdiction with other Federal agencies except where there is an inter-agency memorandum of understanding.
21. Cases involving validity of union mergers, affiliations, disaffiliations where there is continuity of representation but lack of due process is alleged.
22. Cases involving Jefferson Chemical, 200 NLRB 992; Purolater Products, 289 NLRB 984, where the continued commission of unfair labor practices is delaying the litigation of earlier cases.
23. Cases involving reinstatement of charges filed outside the Section 10(b) period where the reinstatement is based on fraudulent concealment of material facts.
24. Cases involving denial of access to private property where it is alleged that there is no reasonable alternative

means of communication or where off duty or striking employees are seeking access to make appeals to the public.

25. Cases involving the legality of union or union-sponsored actions which, although arising in the context of a labor dispute, address matters of social concern. See GC Memorandum 95-14

26. Cases involving a Board notice to parties for a response following a remand from the Court of Appeals. See GC Memorandum 95-14

27. Cases in the health care industry where the supervisory status of a health care worker is based solely on the direction of less skilled employees using independent judgment or discretion.

28. Cases where the issue is whether the successor employer had plans to retain all the predecessor's employees. See Spruce Up Corp., 209 NLRB 194; Canteen Company, 317 NLRB No. 153.

29. Cases where an Employer's withdrawal of recognition or refusal to bargain is not based upon a good faith doubt but the Region has evidence, unknown to the Employer, that the Union no longer represents a majority of employees.

F.F.